

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Suzanne B. Conlon	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	97 C 8861	DATE	7/20/2000
CASE TITLE	RUTH FIGUEROA vs. CITY OF CHICAGO, et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Defendant Rudy Urian's motion for judgment as a matter of law [304-1] is denied. ENTER MEMORANDUM OPINION AND ORDER.

*Suzanne B. Conlon*

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials	Date/time received in central Clerk's Office	number of notices	Document Number  352
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in the light most favorable to the party against whom the motion is directed.” Mathur v. Board of Trustees of Southern Illinois University, 207 F.3d 938, 941 (7<sup>th</sup> Cir. 2000) (quoting Emmel v. Coca-Cola Bottling Co. of Chicago, 95 F.3d 627, 629 (7<sup>th</sup> Cir. 1996)). In reviewing a motion for judgment as a matter of law, the court must refrain from substituting its view of the contested evidence for that of the jury. Mathur, 207 F.3d at 941.

In order to prevail on a §1983 claim of sexual harassment in violation of the equal protection clause, a plaintiff must show both (1) sexual harassment, and (2) an intent to harass the plaintiff based on the plaintiff’s membership in a particular class of citizens – male or female. Trautvetter v. Quick, 916 F.2d 1140, 1149 (7<sup>th</sup> Cir. 1990); King v. Board of Regents of the University of Wisconsin System, 898 F.2d 533, 538 (7<sup>th</sup> Cir. 1990). The inquiry under the harassment prong mirrors that used to evaluate Title VII harassment claims; the plaintiff must show that the harassment was sufficiently severe or pervasive so as to alter the conditions of the victim’s employment and create an abusive working atmosphere and that the advances were unwelcome. Trautvetter, 916 F.2d at 1149 (citations omitted). Under the second prong, a female plaintiff must prove the defendant’s harassment resulted from an intent to discriminate against her because of her gender -- her status as a female -- and not because of characteristics personal to her. Id. at 1151; Bohen v. City of East Chicago, 799 F.2d 1180, 1187 (7<sup>th</sup> Cir. 1986). In making this showing, the plaintiff need not show that all or multiple female employees were sexually harassed; “discrimination against the plaintiff because of her membership in the class is by itself enough.” King, 898 F.2d at 539; see also Trautvetter, 916 F.2d at 1151.

Urian’s motion focuses on the second prong -- whether he intentionally harassed Figueroa based on her gender. In support of her § 1983 claim of sexual harassment, Figueroa introduced evidence that, among other things, Urian: (1) kissed her while putting his tongue in her mouth, after

which she pushed him away and told him to stop while screaming, Figueroa Testimony, Tr. 5/9/2000 at 27; (2) kissed and caressed her while grabbing her until she screamed for help, id. at 30-31; and (3) forced her to accompany him on a series of errands during which he told her he wished to have an affair with her, id. at 35-60. Although the evidence may initially appear to be evidence of sexual harassment (as opposed to evidence of the underlying motivation for that harassment), Seventh Circuit precedent demonstrates this evidence is sufficient to support an inference of gender-based intent for the harassment.

In King v. Board of Regents of the University of Wisconsin System, 898 F.2d 533 (7<sup>th</sup> Cir. 1990), the plaintiff, a female university professor, introduced evidence that a male dean directed sexually suggestive innuendos and comments toward her, touched and rubbed her body in a sexually suggestive manner, and forcibly kissed and fondled her. The plaintiff also introduced evidence that these actions were unwelcome. The dean argued that the harassment was not gender-based, but was instead motivated by his desire for the plaintiff as an individual. King, 898 F.2d at 539. In affirming the jury's verdict in favor of the plaintiff, the Seventh Circuit concluded the evidence supported an inference that the dean's conduct was motivated by an intent to harass based on gender. The court reasoned that the dean's actions were based on gender because he wished to have a sexual affair and his actions were "motivated by his libido" and "not consistent with platonic love." King, 898 F.2d at 539. The court determined that "treatment of an individual based on sexual desire . . . affirmatively establishes" intent to harass based on sex. Id.

The facts of this case are very similar to those in King. Like the defendant in King, the evidence shows Urian engaged in acts of harassment clearly sexual in nature. Urian expressed a desire to have an affair with Figueroa, thereby supporting an inference that his actions were motivated by

Figueroa's sex. King, 898 F.2d at 539.<sup>1</sup> In contrast, the facts differ substantially from those in Trautvetter, where the court determined there was no genuine issue of fact as to whether the plaintiff was harassed because of her gender. In Trautvetter, the plaintiff, a female school teacher, sued her male supervisor for sexual harassment under § 1983. However, the evidence revealed that the plaintiff and defendant participated in a largely consensual period of courtship that culminated in an adulterous sexual relationship. While the plaintiff initially "politely" declined the defendant's advances, she eventually responded to the defendant's romantic suggestions. Trautvetter, 916 F.2d at 1142-44. The plaintiff did not introduce evidence that she told the defendant his advances were inappropriate, and the evidence showed the plaintiff actively participated in the relationship. Id. Only after the parties had their first sexual encounter did the plaintiff decide to end the relationship. Id. at 1144. Evidence showed the plaintiff then expressed remorse for having hurt her family by pursuing the affair. Id. at 1145.

Thus, Trautvetter differs from the circumstances of this case. Here, the evidence supports a reasonable inference of unwelcome sexual harassment based on gender as opposed to welcome acts of courtship based on the defendant's affection for the plaintiff. Urian points to no evidence showing that Figueroa actively participated in or encouraged the encounters. Urian counters that the purported evidence of harassment shows only that he may have attempted to develop an intimate relationship with Figueroa based upon a characteristic personal to her – namely, a preexisting friendship between himself and Figueroa. Specifically, Urian contends that he and Figueroa at one time enjoyed a close personal friendship during which their respective families frequently attended social events and parties

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<sup>1</sup> Urian does not argue that his actions were motivated by Figueroa's particular sexual characteristics. But even if he did, this would not negate an inference of gender-based intent. King, 898 F.2d at 539.

together. Urian notes he and his wife served as godparents to one of Figueroa's children. Urian argues these characteristics particular to Figueroa – that she happened to be a woman with whom he had a close personal and familial relationship in the past – motivated his actions.

However, Figueroa contends the alleged friendship was really between Urian and her husband, not Urian and herself. And even if Urian and Figueroa enjoyed a friendship, Urian fails to articulate how this purported friendship motivated his conduct. The evidence supports an inference that Urian harassed Figueroa, not that he simply “attempted to become more intimate with her than the friendship level to which she was accustomed.” Mot. for Judgment as a Matter of Law, at 4. A preexisting friendship, without more, does not explain acts of sexual harassment. Indeed, friendship is inconsistent with harassment. See King, 898 F.2d at 539.

Urian points to Huebschen v. Department of Health and Social Services, 716 F.2d 1167 (7<sup>th</sup> Cir. 1983) and Keppler v. Hinsdale Township High School District 86, 715 F. Supp. 862 (N.D. Ill. 1989), a case following Huebschen. However, Huebschen is inapposite. In Huebschen, the plaintiff had a friendship with the defendant, his supervisor, that developed into a consensual romantic relationship including consensual sex. A week after plaintiff told the defendant he wished to end the sexual relationship and return to being simply her friend, the defendant recommended his termination. The plaintiff claimed the defendant intentionally discriminated against him because of his gender. The Seventh Circuit disagreed, concluding that the plaintiff's gender “was merely coincidental to [the defendant's] action.” Id. at 1172. The court found that the defendant's motivation in recommending the plaintiff's termination was not that he was a male, “but that he was a former lover who had jilted her.” Id. at 1172. The court remarked that if there was a class of persons the defendant sought to

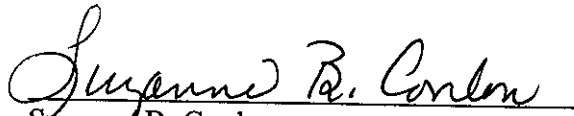
discriminate against, it was not the class of all men, but only those men with whom she sought or had a romantic affair. Id. at 1172.

The facts of Huebschen differ from those of this case in two important respects. First, the discriminatory act in Huebschen was the defendant's decision to recommend the plaintiff's termination. That act, standing alone, was not probative of discrimination based on the plaintiff's sex. In contrast, Urian's discriminatory acts -- his sexual harassment -- are by their nature probative of gender-based motivation. King, 898 F.2d at 539. Second, the relevant personal characteristic of the plaintiff in Huebschen was his rejection of the defendant. It was plausible that this rejection hurt the defendant emotionally and caused her to engage in the discriminatory act (recommending the plaintiff's termination). Moreover, the plaintiff offered no evidence showing the defendant's action could be attributed to other causes. Here, however, Urian fails to articulate how a preexisting friendship caused his sexual conduct toward Figueroa and resulted in the unwelcomed kissing, touching, and a request for an affair. Urian fails to show the jury's verdict was not based on reasonable inferences taken from Figueroa's evidence. Accordingly, his motion for judgment as a matter of law must be denied.

### CONCLUSION

Urian's motion for judgment as a matter of law is denied.

ENTER:

  
Suzanne B. Conlon  
United States District Judge

July 20, 2000